

The summons, or the warrant, according as it is lawful to use one or the other, are the regular means of compelling the appearance of persons, whether as accused to answer, or as witnesses to give evidence. A warrant may also be issued to *search* for property or to find a *document*. It will therefore be desirable, before proceeding to the account of how a *trial* is conducted, to describe the rules under which these *processes* to compel *appearance*, or to find *property*, are legally executed.

I may here repeat that even when an arrest or a search could be made *without* a warrant, it is always advantageous to have a warrant<sup>9</sup>.

#### SECTION IV.—CRIMINAL PROCESSES OF CRIMINAL COURTS.

##### § 1.—*Execution of Summons.*

The summons is in writing in an established form and in duplicate; it is usually served through a Police officer. (Section 68.)

It is served *personally*, by exhibiting one copy and delivering or tendering the other. If the personal service is not possible because the accused cannot be found, this *copy* is left with some adult male member of the family *residing with* the accused; this member must *sign a receipt* for the copy. (Section 70.) If this method is impracticable, then the *copy* is *affixed* on some *conspicuous* part of the *house* where the *accused ordinarily resides*. (Section 71.)

Where a summons is applied for to be served beyond the jurisdiction of the Magistrate, section 73 must be referred to.

Summons to persons—"in the active service of the Government

a Magistrate, a *summons* will ordinarily issue (except for cases under section 62 of the Act), which are *warrant* cases. And all forest offences (*including* those in which a *warrant* will issue under section 62) are *bailable* by reason of the second schedule to the Code (see at the end of the schedule).

<sup>9</sup> And by section 24 of Act V of 1861, the Police Act, the Police *can also* apply to Magistrate for warrants in *any* offence, and with such warrants investigate and prosecute.

or of a Railway Company" may be sent to the head of the office for service. (Section 72)<sup>10</sup>.

### § 2. ~~1~~ Execution of Warrants.

This also is in writing, signed and sealed by the Magistrate in an established form. A warrant once issued remains in force until it is cancelled by the court or until it is executed. In case of a remand to custody there must be an express warrant to commit to custody under section 344.

A Magistrate may also direct, in issuing the warrant, that bail may be taken (*i.e.*, that a bond with an indicated number of securities for a specified amount of money for his attendance, be executed), and then when the person is apprehended, if he gives the required bail, he may be let go. (Section 76.)

Warrants are *ordinarily* directed to a *Police officer*, but *may* be directed to any one. (Section 77, see also section 78.)

It should be borne in mind that *any* person who is present in a Criminal Court may be then and there arrested (as if a warrant had been issued) for any offence he may have committed (section 351), and any Magistrate may direct the arrest *in his own presence* of any one for whose arrest he is competent to issue a warrant. (Section 65.)

For warrants to be executed outside the Magistrate's own jurisdiction reference to sections 82 and 83.5 of the Code must be made.

In any case where a warrant cannot be executed by reason of the person absconding or concealing himself, a *proclamation* is read at some conspicuous place of the town or village where the accused resides, requiring him to appear within a period fixed but not less than thirty days. The proclamation is then affixed in some conspicuous part of his house, or at some place in the town or village; also a copy is posted at the Magistrate's court-house. (Section 87.)

At the same time *all* property is liable to attachment. (Section 88.) If the accused does not appear within the time fixed, it may

<sup>10</sup> Soldiers on the march cannot be summoned as witnesses. In ordinary cases they would be summoned through their commanding officers.

be sold and forfeited to Government after six months, unless it is perishable, when it may be sold at once and the proceeds dealt with as the property. Within two years, however, if the person appears and shows that he did not abscond or conceal himself for the purpose of evading justice, he can get the property or the sale-proceeds back.

When the warrant is executed, the substance is to be notified to the person, who may demand to see the warrant (section 80). In making the arrest the person is to be actually touched or confined, 'unless there is submission to custody by word or action.' (Section 46.)

It will often happen that the person to be arrested is in a house, or takes refuge in a house. Generally speaking (section 46), in this and all other cases, the Police officer or other person executing the warrant may *use all means necessary to effect the arrest*.

The persons residing in the house, or in charge of it, are bound, on demand, to allow ingress (section 47), and afford reasonable facilities to search for the person to be arrested. Any outer door, inner door, or window may be broken open, if, after demand duly made, the officer cannot get admission otherwise. (Section 48.) As to breaking open women's apartments see section 48, clause 3. The general rule is to call upon all women to withdraw, and allow them to do so, taking of course precautions that the person to be arrested does not escape, and then the premises may be entered.

Persons arrested under a Magistrate's warrant are always "without unnecessary delay" to be taken before the Magistrate (section 81). See also Forest Act, section 63 (B. *id.*).

### § 3.—*Search Warrant.*

A Forest Officer may be invested with power under section 71e, Forest Act (B. 70c), to issue a search warrant under the Code.

This power would be advantageously conferred chiefly in charges where there is a large and important timber floating business, as on the Salween, in Burma, and where there is perpetual risk from timber thieves whose premises may require at any time to

be searched to discover timber concealed, unlawfully sawn up to facilitate secret disposal, and so forth.

A search warrant may be issued—

- (a) when a summons *to produce* a document or thing (section 94) has not been, or is not likely to be, obeyed ;
- (b) where the court considers that the purposes of any enquiry, trial or other proceeding under the Code will be served by a general search or inspection.

The warrant may be either *general*, i.e., to search any house or place within the jurisdiction of the Magistrate of the district, or *restricted* to the search of a house or place, or even a *specified part* of such house or place. (Section 97.)

Search warrants are usually directed to a Police officer and, generally, the provisions relating to ordinary warrants, apply. (Section 101).

In any case the property found is to be taken to the Magistrate, as directed in section 99<sup>1</sup>.

Persons residing in or in charge of the house or place to be searched are bound to allow ingress (section 102), and there is the same power as before described of breaking open door or window if ingress cannot be had otherwise, and after due demand. So in searching a *zanána*, opportunity must be given for women to withdraw, but with precautions to prevent the clandestine removal of property. Before making a search, the officer conducting it *shall call two or more* respectable inhabitants of the neighbourhood to attend and *witness* the search. They cannot, however, be afterwards required to attend Court unless specially summoned by the Magistrate. (Section 103.) The *occupant* of the house or place searched has a *right to attend* during the search. It is not said in the Code, but it is a rule of practice that search is made by daylight unless there is an emergent reason otherwise.

If large and heavy logs, for instance, were found, it would, I presume, be necessary to take steps to secure them, and it would be sufficient to *report* the fact and take the Magistrate's order.